

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN

3 DWAYNE B., a minor by his Next)
4 Friend, John Stempfle, et al, for) Detroit, Michigan
themselves and others similarly)
situuated,)
Plaintiff,) January 24, 2023
vs.) 11:07 a.m.
GRETCHEN WHITMER, in her official) Case No. 06-3548
capacity as governor of the state) of Michigan, et al.,
Defendant.)

9)

10 TRANSCRIPT OF HEARING
11 BEFORE THE HONORABLE NANCY G. EDMUNDS
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff: SAMANTHA BARTOSZ
15 Children's Rights
16 330 Seventh Avenue
17 New York, NY 10001

18 For the Defendant: CASSANDRA A. DRYSDALE-CROWN
19 Michigan Attorney General
20 PO Box 30758
21 Lansing, MI 48909

22 Court Reporter: Carol M. Harrison, RMR, FCRR
23 1000 Washington Avenue
24 Bay City, MI 48708

25 Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

PROCEEDINGS

11:05:43AM 2 (At 11:07 a.m., proceedings began.)

11:07:41AM 3 THE CLERK: 06-13548, D.B. versus Granholm.

11:07:47AM 4 Counsel, please state their name for the record.

11:07:51AM 5 MS. BARTOSZ: Good morning, Your Honor, Samantha

11:07:52AM 6 Bartosz from Children's Rights on behalf of the plaintiff.

11:07:59AM 7 MS. DRYSDALE-CROWN: Good morning, Your Honor. This
11:08:00AM 8 is Assistant Attorney General Cassandra Drysdale-Crown. I
11:08:05AM 9 apologize for not being able to turn on my video. I'm having a
11:08:20AM 10

11:08:10AM 11 I am here on the behalf of State defendants. I have
11:08:13AM 12 with me Director Elizabeth Hertel, as well as Director
11:08:19AM 13 Demetrius Starling and Director Kelly Sesti on behalf of State
11:08:24AM 14 defendants.

11:08:25AM 15 THE COURT: And I see that Director Hertel is here as
11:08:29AM 16 well.

11:08:40AM 17 (Off-the-record discussion.)

11:10:10AM 18 **THE COURT:** Okay. And I see Director Starling is
11:10:12AM 19 here as well. I don't know if you were introduced just a
11:10:15AM 20 moment ago or not.

11:10:18AM 21 MS. DRYSDALE-CROWN: Sure, Your Honor. Thank you.

11:10:21AM 22 If you would like us to start with State defendants, we'd be
11:10:24AM 23 more than honored to start.

11:10:26AM 24 | Good morning. As I --

11:10:27AM 25 **THE COURT:** Well, sorry. I would like to hear from

11:10:30AM 1 the minors before I hear from the parties.

11:10:33AM 2 **MS. DRYSDALE-CROWN:** Thank you.

11:10:36AM 3 **THE COURT:** Mr. Ryan and Ms. Crummy.

11:10:42AM 4 **MR. RYAN:** Good morning, Your Honor. This is Kevin

11:10:43AM 5 Ryan. Today we're submitting the 18th report to the Court in

11:10:45AM 6 the matter of Dwayne B. versus Whitmer covering period 21,

11:10:50AM 7 which is July 1st, 2021 to December 31, 2021 under the Modified

11:10:57AM 8 Implementation Sustainability and Exit Plan called the MISEP.

11:11:03AM 9 Michigan DHHS met or exceeded the required

11:11:05AM 10 performance standards in 13 areas monitored for compliance in

11:11:09AM 11 MISEP period 21. In all of these 13 areas, the State also

11:11:14AM 12 exceeded or came very close to the performance standard in

11:11:17AM 13 previous periods as well.

11:11:20AM 14 Among areas where the agencies continue to achieve

11:11:23AM 15 high levels of performance are caseloads. DHHS exceeded the

11:11:28AM 16 caseload standards established for Child Protective Services

11:11:31AM 17 workers, purchase of service workers, and licensing workers.

11:11:36AM 18 Also worker-child visits, ensuring that children

11:11:39AM 19 receive at least one visit per month in their placement

11:11:41AM 20 location, promptly completing investigations of child abuse and

11:11:46AM 21 neglect and ensuring children's health records are up to date

11:11:51AM 22 and include children's -- are included in children's digital

11:11:54AM 23 case records.

11:11:55AM 24 The MISEP allows that once DHHS has satisfied the

11:11:59AM 25 designated performance standard for certain commitments at the

11:12:03AM 1 end of one reporting period, as validated by the monitors, the
11:12:06AM 2 commitment is eligible to be moved to the Section 5 of the
11:12:10AM 3 MISEP, just called "To Be Maintained", and three commitments
11:12:14AM 4 meet this criteria at the conclusion of MISEP period 21:
11:12:18AM 5 Worker-Child Visits, one visit per month in the placement
11:12:22AM 6 location, which is Section 6.21.b; Child Case File, Medical and
11:12:29AM 7 Psychological, one, which is Section 6.30; and Child Case File,
11:12:35AM 8 Medical and Psychological, two, which is Section 6.30.
11:12:41AM 9 The MISEP also allows that for certain commitments,
11:12:44AM 10 once DHHS has maintained performance at the designated
11:12:49AM 11 performance standard for two consecutive reporting periods, the
11:12:52AM 12 commitment will be moved to Section 4 of the MISEP, known as
11:12:55AM 13 Structures and Policies. One commitment met these criteria at
11:12:59AM 14 the conclusion of MISEP 21, Support for Transitioning to
11:13:03AM 15 Adulthood which is 6.36.a.
11:13:17AM 16 **THE COURT:** Ms. Crummy, I think you're muted.
11:13:18AM 17 **MS. CRUMMY:** Sorry about that. Good morning, Your
11:13:18AM 18 Honor.
11:13:21AM 19 In addition to the 13 areas where Michigan DHHS met
11:13:24AM 20 or exceeded the required performance standards in MISEP period
11:13:28AM 21 21, the State was within 10 percent of the performance standard
11:13:32AM 22 in 17 areas. Of these 17 areas, the State was within 5 percent
11:13:37AM 23 of the performance standard in six areas, with performance at
11:13:42AM 24 or above 90 percent. Examples include, 98.8 percent of
11:13:47AM 25 children in period 1 were placed in a licensed foster home, a

11:13:51AM 1 licensed facility, pursuant to a court order or in an
11:13:55AM 2 unlicensed relative home pursuant to commitment 6.5.
11:14:00AM 3 93.6 percent had at least one visit per month with
11:14:05AM 4 their case worker that included a private meeting pursuant to
11:14:08AM 5 commitment 6.21.b, and 91.8 percent of foster care workers had
11:14:15AM 6 caseloads of no more than 15 children pursuant to commitment
11:14:22AM 7 6.14.
11:14:22AM 8 In total, Your Honor, DHHS exceeded, met or came
11:14:25AM 9 close to meeting the performance standards in 30 of 55 areas
11:14:30AM 10 monitored for period 21.
11:14:33AM 11 In the MISEP -- the MISEP includes other commitments,
11:14:35AM 12 however, that have not yet taken hold. Maltreatment in care
11:14:40AM 13 investigations. The monitoring team reviewed a sample of
11:14:43AM 14 unsubstantiated investigations into abuse and neglect of
11:14:48AM 15 children in the state's care from federal fiscal year 2021, the
11:14:53AM 16 period which is October 1st of 2020 to September 30th of '21,
11:14:58AM 17 and the team determined that 34, or 37 percent, of 92 randomly
11:15:05AM 18 selected investigations were deficient. This includes nine
11:15:09AM 19 investigations the monitoring team determined met the criteria
11:15:13AM 20 for substantiation of child abuse and neglect and 25
11:15:17AM 21 investigations where there was insufficient information
11:15:20AM 22 gathered to render a finding.
11:15:23AM 23 DHHS reviewed the monitoring team's findings and
11:15:27AM 24 agreed that 29, or 31.5 percent, of the 92 investigations were
11:15:32AM 25 deficient. Summaries of these cases will be filed under seal

11:15:37AM 1 with the Court.

11:15:38AM 2 In addition, for the past year, the monitoring team

11:15:41AM 3 has been reviewing a more recent sample of completed abuse and

11:15:45AM 4 neglect investigations from October 1st of 2021 through

11:15:50AM 5 September 30th, 2022, and we have been meeting with DHHS

11:15:55AM 6 leadership regularly to discuss many of these investigations.

11:15:59AM 7 We expect to file with the Court in March our findings from

11:16:03AM 8 this more recent review of cases.

11:16:06AM 9 In addition to Child Safety and Commitment, 6.1, the

11:16:09AM 10 State did not meet or nearly meet the performance standards for

11:16:13AM 11 24 other commitments, including 6.8 and 6.9, the length of time

11:16:19AM 12 children spend in emergency and temporary facilities and the

11:16:23AM 13 number of times they did so; ensuring periodic and ongoing

11:16:28AM 14 medical, dental and mental health examinations and screening

11:16:32AM 15 pursuant to commitment 6.29; securing informed consent for the

11:16:38AM 16 administration of psychotropic medication to children in

11:16:42AM 17 commitment 6.33; and the documentation and oversight of

11:16:46AM 18 psychotropic medication to children in commitment 6.34.

11:16:51AM 19 And the State did not achieve its commitment on the

11:16:53AM 20 last remaining permanency commitment in the MISEP, permanency

11:16:58AM 21 indicator one, commitment 6.3, which measures the percent of

11:17:02AM 22 children who went to foster care within a 12-month period who

11:17:06AM 23 were discharged to permanency within 12 months of their entry

11:17:11AM 24 date.

11:17:12AM 25 Based on the dates file -- files provided by DHHS,

11:17:17AM 1 the monitoring team calculated that of the 5,483 children who
11:17:21AM 2 entered foster care between October 1st, 2018 and
11:17:26AM 3 September 30th, 2019, 1,501 children, or 27.4 percent, exited
11:17:35AM 4 to permanency within 12 months of their entry. DHHS did not
11:17:40AM 5 meet the MISEP standard of 40.5 percent for this commitment.
11:17:45AM 6 To meet the performance standard agreed upon by the parties,
11:17:50AM 7 DHHS should have achieved permanency for an additional 720
11:17:55AM 8 children.

11:17:55AM 9 In sum, Your Honor, the State has made significant
11:17:58AM 10 progress in 30 of 55 areas monitored in period 21, and
11:18:03AM 11 significant work remains in 25 areas. There is no question
11:18:07AM 12 that progress has been made in this case and with continued
11:18:11AM 13 leadership, investment and focus, we hope the State will
11:18:15AM 14 continue to do so for children in the State's care.

11:18:18AM 15 Thank you, Your Honor.

11:18:21AM 16 **THE COURT:** Thank you Ms. Crummy, Mr. Ryan. As
11:18:24AM 17 usual, your oversight and your report are extremely valuable to
11:18:31AM 18 me, and I appreciate all that you've been doing to move this
11:18:37AM 19 whole program forward.

11:18:41AM 20 And I would be happy to hear now from the State and
11:18:45AM 21 then from the plaintiffs.

11:18:53AM 22 **MS. DRYSDALE-CROWN:** Thank you, Your Honor.

11:18:54AM 23 On the behalf of the State, I would like to introduce
11:18:58AM 24 Michigan Department of Health and Human Services Director
11:19:01AM 25 Elizabeth Hertel. She will speak first to this Court, and then

11:19:05AM 1 second we'll have Children's Services Agency Executive
11:19:09AM 2 Demetrius Starling, and Children's Services Bureau Director
11:19:14AM 3 Kelly Sesti.

11:19:16AM 4 So today first you'll hear from Director Hertel. She
11:19:19AM 5 will provide a general overview of the Department's continued
11:19:23AM 6 progress on the MISEP. And then you will hear from Kelly Sesti
11:19:29AM 7 who will provide a PowerPoint presentation that will focus on
11:19:34AM 8 not only the progress made in the CAPs but also MISEP 21. And
11:19:41AM 9 then you will hear from Director Starling who will provide an
11:19:47AM 10 overview of the efforts the Department is making in its
11:19:50AM 11 continued efforts to improve children's safety who are placed
11:19:53AM 12 in the care of Michigan.

11:19:56AM 13 Director Hertel, I turn it over to you.

11:20:00AM 14 **DIRECTOR HERTEL:** Thank you, and thank you, Your
11:20:03AM 15 Honor, for this opportunity to continue to update the Court
11:20:05AM 16 with our ongoing efforts and strategies to ensure that children
11:20:09AM 17 placed in our care are safe and are achieving positive
11:20:13AM 18 outcomes. I would also like to thank Children's Rights and the
11:20:17AM 19 Michigan monitoring team for their continued efforts to provide
11:20:19AM 20 technical assistance and to discuss items of interest for both
11:20:24AM 21 parties.

11:20:26AM 22 After the Correction Action Plans were approved by
11:20:29AM 23 this Court in April of 2022, we continue to have open lines of
11:20:33AM 24 communication with the court monitors as we effectively
11:20:37AM 25 implement some of the strategies identified in the Corrective

11:20:40AM 1 Action Plans. As of December 31st, 2022, the Department has
11:20:45AM 2 fully implemented 70 of the 72 Corrective Action Plan items,
11:20:49AM 3 while the final two are currently progressing toward full
11:20:54AM 4 implementation.

11:20:55AM 5 The MISEP reporting period currently before this
11:20:58AM 6 Court contains data collected from July 1st, 2021 through
11:21:02AM 7 December 31st, 2021. Therefore, this data does not reflect our
11:21:06AM 8 current performance resulting from the CAP strategies benefits,
11:21:10AM 9 which are helping us improve on several fronts as we refine our
11:21:15AM 10 commitment to ensuring the safety of children placed in our
11:21:18AM 11 care.

11:21:19AM 12 One area that is especially noteworthy is the
11:21:21AM 13 Department's continued efforts to implement strategies to
11:21:25AM 14 increase placement array. These efforts include Public Act 166
11:21:29AM 15 of 2022, which is our State's appropriations bill, which
11:21:33AM 16 included \$15 million of one-time funding for child caring
11:21:37AM 17 institutions. Additionally, a \$10 million dollar legislative
11:21:42AM 18 transfer request made by the Department was approved for child
11:21:46AM 19 caring institutions.

11:21:47AM 20 The combined 25 million was issued as a lump sum
11:21:50AM 21 payment to those child caring institutions committed to
11:21:53AM 22 providing services in fiscal year '23. Fiscal year '23 child
11:21:59AM 23 caring institutions rate increases are an average of 5 percent
11:22:02AM 24 for abuse and neglect programs, 12 percent for juvenile justice
11:22:06AM 25 programs and this is inclusive of a \$2 per hour direct wage

11:22:10AM 1 increase.

11:22:12AM 2 Fiscal year '23 increased rates for foster parents,

11:22:16AM 3 independent living providers, relatives and adoptive parents

11:22:20AM 4 and guardians by 20 percent, which we implemented on

11:22:23AM 5 October 1st of 2022, and I continue to personally review every

11:22:28AM 6 emergency shelter placement.

11:22:31AM 7 In our continuing efforts to monitor contract

11:22:33AM 8 oversight and improve the safety of children in our care, I

11:22:36AM 9 have implemented the MI Kids Now Executive Governance

11:22:40AM 10 Committee, which provides oversight of all decision making

11:22:43AM 11 related to contract action for congregate care facilities. We

11:22:47AM 12 also maintain our steadfast focus on ensuring the safety of all

11:22:52AM 13 youth receiving treatment in congregate care facilities through

11:22:54AM 14 intensive improvements in oversight of those facilities where

11:22:57AM 15 our children are placed, which Director Starling will address

11:23:01AM 16 further in this hearing.

11:23:05AM 17 Although we are experiencing the nationwide

11:23:06AM 18 phenomenon of increased demand for behavioral health services,

11:23:10AM 19 Michigan strives to lead the way in changing this in a number

11:23:13AM 20 of ways. For example, we have implemented a student loan

11:23:17AM 21 repayment program to help address work force challenges in the

11:23:22AM 22 behavioral health field that lead to limited ability to serve

11:23:26AM 23 children. So far the \$2 million of educational debt

11:23:30AM 24 forgiveness has been awarded to Michigan clinicians providing

11:23:33AM 25 mental health services in eligible nonprofit practice sites or

11:23:36AM 1 public school based systems, 74 percent of which are providers
11:23:41AM 2 in our community mental health service programs.

11:23:44AM 3 Additionally, Michigan recently implemented the first
11:23:48AM 4 cohort of grants to community mental health service providers
11:23:51AM 5 to implement innovative approaches to enhance intensive crisis
11:23:55AM 6 stabilization services for children and families, which
11:23:58AM 7 includes 24/7 availability of those services, statewide
11:24:02AM 8 coverage, access expectations and alignment to the State's
11:24:06AM 9 model with national best practice approaches.

11:24:10AM 10 Additionally, Michigan has expanded its intensive
11:24:12AM 11 community transition services benefit to assist with the
11:24:16AM 12 discharge process and to move children out of our Hawthorne
11:24:20AM 13 Center, which is Michigan's inpatient psychiatric hospital, and
11:24:24AM 14 into community-based settings.

11:24:26AM 15 These services are available to adults and children
11:24:29AM 16 who are ready to be discharged to a community based setting but
11:24:33AM 17 require more intensive care than those in a traditional
11:24:36AM 18 setting. These services recognize the acute needs of patients
11:24:40AM 19 and create a supportive structure to ensure successful
11:24:44AM 20 transition to a traditional community placement and are funded
11:24:47AM 21 100 percent by State dollars.

11:24:50AM 22 We continue to move forward toward the development of
11:24:54AM 23 psychiatric residential treatment facilities, Medicaid benefit
11:24:58AM 24 that will serve as a step-up or a step-down setting for
11:25:01AM 25 children. This facility -- these facilities will support a

11:25:05AM 1 transition process for children to reenter the community for
11:25:08AM 2 many inpatient, public or private setting that is funded
11:25:11AM 3 through the Medicaid program.

11:25:15AM 4 The current year budget also includes \$30.5 million
11:25:18AM 5 to support expanded access and capacity for behavioral health
11:25:22AM 6 services, and these funds support expansion of that intensive
11:25:26AM 7 community transition services for both adults and children.

11:25:30AM 8 The current year budget also includes \$41 million to
11:25:34AM 9 support the expansion of two units at our Hawthorne Center for
11:25:36AM 10 children recognizing the needs of children in private hospital
11:25:40AM 11 settings that require an inpatient level of care.

11:25:44AM 12 These are some of the ways that we continue to expand
11:25:46AM 13 services for children and families in Michigan, and as I have
11:25:49AM 14 mentioned earlier, you have my full commitment to improve
11:25:53AM 15 safety and outcomes for children and families in Michigan.

11:25:57AM 16 I am exceedingly proud of the work that we do and the
11:26:01AM 17 improvements that we are making as we continue to work toward
11:26:03AM 18 excellence in our child welfare system.

11:26:06AM 19 I will now turn it over to Kelly Sesti, who does
11:26:09AM 20 maintain the coordination of reporting for the MISEP and the
11:26:11AM 21 implementation of our CAP strategies for the Department in her
11:26:16AM 22 new role as bureau administration director for children's
11:26:20AM 23 services to go over some of these things in more detail.

11:26:23AM 24 Thank you, Your Honor.

11:26:25AM 25 **THE COURT:** Thank you, Director Hertel.

11:26:28AM 1 Ms. Sesti.

11:26:29AM 2 **DIRECTOR SESTI:** Thank you, Director Hertel, and good

11:26:34AM 3 morning, Your Honor. I appreciate the opportunity to outline

11:26:34AM 4 some of our progress and updates since the last hearing.

11:26:37AM 5 Cass, are you able to share our PowerPoint?

11:26:41AM 6 **MS. DRYSDALE-CROWN:** Yes, I am doing that now.

11:26:48AM 7 **DIRECTOR SESTI:** Okay. All right. Perfect. Thank

11:26:48AM 8 you, Cass. Now if we could start with the data slides.

11:26:53AM 9 So we wanted to begin with sharing some data with all

11:26:57AM 10 of you, so this graph shows the number of children under the

11:27:00AM 11 Department's supervision as well as the children in out-of-home

11:27:04AM 12 care. It also shows removals and exits from care for the past

11:27:10AM 13 year.

11:27:10AM 14 So as you can see, we've seen a steady decline in the

11:27:13AM 15 number of children under our supervision and in out-of-home

11:27:13AM 16 care. We currently have approximately 10,000 children under

11:27:19AM 17 our supervision, and just under 9,400 children in out-of-home

11:27:22AM 18 care. Our exits from care are outpacing our removals, which is

11:27:28AM 19 why we continue to see a decline in the number of children in

11:27:30AM 20 care. This can also be attributed to our prevention work as

11:27:34AM 21 well as our focus on permanency.

11:27:39AM 22 In the next slide, this graph shows the total number

11:27:43AM 23 of children from both our foster care and our juvenile justice

11:27:46AM 24 programs who are placed for treatment in a congregate care

11:27:51AM 25 setting. Specifically it covers the beginning of MISEP 21

11:27:54AM 1 through the end of December 2022. As you can see, we've
11:27:58AM 2 continued to see a steady decline. As of December, we had only
11:28:02AM 3 364 foster youth receiving treatment in congregate care
11:28:07AM 4 settings. The State continues to have a focus on keeping
11:28:09AM 5 children in their communities.

11:28:15AM 6 As I think we miss -- we have one more to update.

11:28:20AM 7 You want to go back one slide.

11:28:22AM 8 So this is an overlay of the last 12 months of data
11:28:25AM 9 for children in congregate care and out-of-home placements.

11:28:27AM 10 Both have continually shown a decrease. I think it's important
11:28:31AM 11 to note that about 3.9 percent of the foster care population in
11:28:35AM 12 Michigan is receiving treatment in a congregate care setting
11:28:39AM 13 compared to the national average of 9 percent, and we received
11:28:42AM 14 that information from Casey Family Programs. So Michigan is
11:28:48AM 15 well under the national average, and we continue to utilize
11:28:52AM 16 treatment in congregate care settings only when absolutely
11:28:55AM 17 necessary with a focus on strengthening our community
11:28:58AM 18 placements.

11:29:02AM 19 Next we'll move to permanency. In regards to
11:29:07AM 20 permanency, we continue our quality improvement effort called
11:29:10AM 21 ChildStat. We adopted this model because it is nationally
11:29:15AM 22 recognized and it has a continued focus on the achievement of
11:29:17AM 23 permanency in 12 months. We have added an emphasis on service
11:29:21AM 24 delivery related to permanency. Counties are identifying any
11:29:25AM 25 barriers, and we work as a team to find solutions. We also

11:29:28AM 1 identify best practices to share staff -- to share statewide,
11:29:32AM 2 excuse me, including staff retention strategies because we know
11:29:37AM 3 staffing changes negatively impact permanency. We're also
11:29:41AM 4 developing supports for relatives to support placements and our
11:29:45AM 5 counties have begun meeting regularly with their court partners
11:29:49AM 6 to discuss permanency data.

11:29:53AM 7 As an update to the information we provided at the
11:29:55AM 8 last hearing, the Department and the State Court Administrative
11:29:59AM 9 Office are working with the University of Michigan to finalize
11:30:02AM 10 the data visualization tool for jurists to utilize across the
11:30:07AM 11 State. The tool is a public-facing data dashboard to enable
11:30:11AM 12 the courts to have a centralized and accessible source of data
11:30:13AM 13 regarding children in foster care that are in their respective
11:30:16AM 14 counties.

11:30:17AM 15 U of M will have the tool developed by the end of
11:30:21AM 16 month. Trainings are being planned for February and March and
11:30:23AM 17 will include all legal partners statewide as well as
11:30:27AM 18 caseworkers, both public and private. The application is
11:30:31AM 19 interactive and will allow our legal partners to better track
11:30:34AM 20 data and measure outcomes related to permanency.

11:30:38AM 21 We've also implemented expedited permanency hearings
11:30:40AM 22 in Calhoun and Van Buren Counties. Both programs have seen
11:30:44AM 23 success in moving to permanency more quickly, and we look
11:30:48AM 24 forward to sharing those best practices and information with
11:30:50AM 25 other courts cross Michigan.

11:30:52AM 1 MDHHS is committed to improving well-being outcomes
11:31:00AM 2 for the children and families we serve. We've added two new
11:31:03AM 3 contracts to expand resources for domestic violence services.
11:31:06AM 4 We've also implemented an enhanced treatment foster care pilot
11:31:11AM 5 which provides supports to caregivers given an evidence-based
11:31:15AM 6 model to maintain placements that are at risk for disruption.
11:31:18AM 7 The caregiver support is aimed to stabilize the
11:31:21AM 8 placement and ensure the child receives services to meet their
11:31:24AM 9 immediate needs. The program responds to the family within 24
11:31:28AM 10 hours of referral.
11:31:34AM 11 And, lastly, I wanted to highlight a few of our
11:31:37AM 12 supports that we have put in place to promote placement
11:31:40AM 13 stability, especially for our kinship providers. I will just
11:31:44AM 14 highlight a few of them listed here.
11:31:47AM 15 So we've developed the Kinship Advisory Council,
11:31:50AM 16 which is tasked with advocating for the needs of kinship
11:31:53AM 17 families. The Council has quarterly meetings with two
11:31:56AM 18 subcommittees that meet monthly and focus on outreach and
11:32:00AM 19 engagement and services coordination and delivery.
11:32:04AM 20 We're also excited about our grow curriculum being
11:32:09AM 21 utilized for all new foster and adoptive parents and the
11:32:12AM 22 release of this computer-based training later this year.
11:32:16AM 23 As we mentioned at the last hearing, kinship parent
11:32:20AM 24 support workers have been hired throughout the State to provide
11:32:23AM 25 extra support for kinship caregivers, and we're especially

11:32:27AM 1 excited that we also received funding for these workers to have
11:32:30AM 2 access to funds to provides concrete supports for the families
11:32:34AM 3 that they're working with.

11:32:36AM 4 And, lastly, I'll mention in Wayne, Oakland and
11:32:39AM 5 Macomb we are implementing the Core Teen pilot, which is aimed
11:32:43AM 6 at providing specialized training to foster parents on caring
11:32:47AM 7 for teens with the goal of expanding foster homes for older
11:32:51AM 8 youth.

11:32:55AM 9 Thank you, Your Honor, for the opportunity to
11:32:57AM 10 present, and I'm happy to answer any questions regarding any of
11:33:01AM 11 the slides, either now or after Director Starling presents some
11:33:05AM 12 additional information regarding our efforts to improve safety.

11:33:10AM 13 **THE COURT:** Let's hear from Director Starling before
11:33:13AM 14 we start with questions.

11:33:14AM 15 **DIRECTOR SESTI:** Okay. Thank you.

11:33:17AM 16 **DIRECTOR STARLING:** And thank you, Kelly. Good
11:33:18AM 17 morning, Your Honor.

11:33:19AM 18 **THE COURT:** Good morning.

11:33:19AM 19 **DIRECTOR STARLING:** As you saw on Kelly's
11:33:21AM 20 presentation, MDHHS has implemented strategic efforts to
11:33:26AM 21 improve the safety children in our care, expand our resources
11:33:28AM 22 for our kin, and continues to decrease the number of children
11:33:32AM 23 in out-of-home care and those also in congregate care setting.
11:33:36AM 24 This is great work we believe, and we are very proud of our
11:33:39AM 25 progress thus far, but we know the safety of children placed in

11:33:43AM 1 our care continues to be our priority.

11:33:47AM 2 I believe the strategies being implemented through

11:33:50AM 3 the Court's approved Correctional Action Plan and our joint

11:33:54AM 4 review process with the monitors to review maltreatment in care

11:33:58AM 5 cases will continue to help us to achieve compliance with the

11:34:02AM 6 MISEP commitments.

11:34:04AM 7 As mentioned at the last hearing, the Department

11:34:06AM 8 created the Division of Child Safety and Program Compliance to

11:34:10AM 9 provide some of the increased contract oversight for our

11:34:14AM 10 congregate care facilities and our private foster care

11:34:17AM 11 agencies. Since our last status hearing, we have begun

11:34:21AM 12 implementing this new division and all contracted CCI and

11:34:25AM 13 foster care providers have been placed on an annual schedule

11:34:29AM 14 for contract evaluations.

11:34:32AM 15 The evaluations are data driven and maintain a

11:34:35AM 16 primary focus on child safety. This new division facilitates

11:34:41AM 17 monthly meetings with both private agency, foster care

11:34:44AM 18 providers, and our residential providers to ensure an ongoing

11:34:48AM 19 partnership that is focused on improved child safety through

11:34:52AM 20 data analysis and shared best practices.

11:34:57AM 21 Providers are active participants in all of these

11:34:59AM 22 meetings. This platform provides an opportunity for continuous

11:35:04AM 23 engagement and feedback between the Department and our private

11:35:08AM 24 agency partners specific to child safety and improved outcomes.

11:35:14AM 25 We also continue to work with the Building Bridges

11:35:20AM 1 Initiative to maintain a keen focus on child safety programming
11:35:21AM 2 around areas such as reduction and elimination of restraints
11:35:26AM 3 and trauma informed care.

11:35:28AM 4 Your Honor, we know we need to continue to make
11:35:31AM 5 system-wide improvements to ensure child safety by preventing
11:35:36AM 6 maltreatment in care incidents. Accordingly, we created a new
11:35:39AM 7 Maltreatment in Care Division within the Department. This new
11:35:44AM 8 division reports directly to myself. The goal is to improve
11:35:48AM 9 consistency in investigations, improve documentation, and
11:35:53AM 10 implement systemic changes to improve safety.

11:35:57AM 11 As I've mentioned, we have worked closely with the
11:36:01AM 12 monitors on the maltreatment in care case reviews and, as a
11:36:04AM 13 result, we have already begun to make improvements within our
11:36:07AM 14 systems. These improvements include, but are not limited to,
11:36:11AM 15 increased requirements for medical examinations on cases,
11:36:16AM 16 increased child interviews at congregate care facilities,
11:36:21AM 17 requirements to interview teachers, development of a gun
11:36:26AM 18 protocol to offer guidance to our investigators, improved
11:36:32AM 19 documentation on unsubstantiated investigations, exploration of
11:36:37AM 20 funding for requiring cameras in all of our congregate care
11:36:41AM 21 settings, and also, as Kelly has indicated previously, we've
11:36:45AM 22 also developed many programs to support kin providers, which
11:36:49AM 23 improves safety and care per the reports provided to us by the
11:36:53AM 24 University of Michigan through our evaluation of our MIC
11:36:58AM 25 trends.

11:36:58AM 1 We are especially excited about the development of
11:37:01AM 2 the kinship support specialists across the state, and we are
11:37:04AM 3 happy to continue to work with the monitors on refining our
11:37:07AM 4 practices and procedures. We will continue to review our
11:37:12AM 5 maltreatment in care cases collectively with the monitoring
11:37:15AM 6 team, and we are confident that we will see improvement in
11:37:18AM 7 these cases based off of these efforts.

11:37:20AM 8 Again, Your Honor, I appreciate the time here being
11:37:24AM 9 able to go over some of our enhancements and some of our
11:37:28AM 10 transformative changes and I will defer to the group if they
11:37:31AM 11 have any questions or things that they want us to touch more
11:37:34AM 12 upon. Thank you.

11:37:36AM 13 **THE COURT:** Thank you, Director Starling.

11:37:39AM 14 Ms. Bartosz, I'll hear from you, and then we can have
11:37:42AM 15 our question session when everybody's done making their
11:37:47AM 16 presentation.

11:37:49AM 17 **MS. BARTOSZ:** Thank you, Your Honor. Good morning.

11:37:52AM 18 Nice to be before the Court again.

11:37:56AM 19 Your Honor, there are two, if you will, sets of
11:37:58AM 20 performance data I think we're looking at this morning. One is
11:38:03AM 21 the validated performance reported by the monitors with respect
11:38:09AM 22 to MISEP period 21 and, secondly, is performance data with
11:38:16AM 23 respect to work by DHS in implementing the CAP that this Court
11:38:22AM 24 approved last April.

11:38:23AM 25 Your Honor, significantly, with respect to the MISEP

11:38:25AM 1 report 21, as Ms. Crummy pointed out, there are 24 areas in
11:38:32AM 2 which the State has still not achieved even coming within
11:38:37AM 3 10 percent of the performance goal agreed to by the parties in
11:38:41AM 4 entering into the settlement.

11:38:44AM 5 In short, in a number of areas, significant work
11:38:49AM 6 remains to be done. However, focusing really on the area of
11:38:56AM 7 safety to get an overall feel for where we're at, there's two
11:39:03AM 8 safety areas the monitors have reported with respect to in
11:39:07AM 9 MISEP 21 that are of grave concern, or great concern I'll say,
11:39:11AM 10 to plaintiffs here.

11:39:13AM 11 One is the issue of maltreatment in care, and, as
11:39:17AM 12 Ms. Crummy outlined for the Court, the monitors conducted a
11:39:20AM 13 review of 92 randomly selected cases from federal fiscal year
11:39:27AM 14 2021, and in that group determined that 37 percent of CPS
11:39:34AM 15 investigations with respect to maltreatment in care -- I should
11:39:37AM 16 say maltreatment in care investigations -- were deficient.

11:39:42AM 17 There should have been further investigation or the
11:39:45AM 18 agency should have actually substantiated an investigation that
11:39:50AM 19 are returned as unsubstantiated, and you've heard that DHS
11:39:54AM 20 itself, in reviewing these files with the monitors, have agreed
11:39:59AM 21 that 31 percent of that sample was, in fact, deficient.

11:40:04AM 22 That's incredibly concerning to the plaintiffs, Your
11:40:07AM 23 Honor, even this late into the implementation of the settlement
11:40:13AM 24 that literally one-third of cases going through maltreatment in
11:40:16AM 25 care investigations could, by the State's own admission, be

11:40:22AM 1 falling short of sound practice. So we think vital work
11:40:27AM 2 remains to be done in that area.

11:40:30AM 3 In the related area of contract oversight, DHS
11:40:34AM 4 assuring appropriate performance by its private providers, the
11:40:38AM 5 monitors have reported -- and I'll quote them -- that DHS's
11:40:43AM 6 contract evaluations, quote, "Continue to be inconsistent, at
11:40:47AM 7 times ineffective and in numerous instances did not ensure the
11:40:52AM 8 safety and well-being of the plaintiffs." We're, likewise,
11:40:57AM 9 very concerned by this finding this long into the
11:41:03AM 10 implementation and believe it's vital that continuing efforts
11:41:07AM 11 be made.

11:41:08AM 12 Finally, with respect to the MISEP 21 report, I would
11:41:14AM 13 highlight the ways that -- the distance that still needs to be
11:41:17AM 14 closed on the permanency within 12 months outcome. Children
11:41:21AM 15 were moved into the system, how quickly they can receive
11:41:27AM 16 placement, stable placements, once coming into foster care.
11:41:31AM 17 The performance there is quite short, and as Ms. Crummy pointed
11:41:35AM 18 out, the State literally needed to see 720 additional children
11:41:40AM 19 in placement in that 12-month period in order to meet the
11:41:44AM 20 performance goal in the settlement agreement, which happens to
11:41:48AM 21 be the federal child and families services review requirements
11:41:53AM 22 as well.

11:41:54AM 23 So there are big areas shown in MISEP 21 where work
11:41:59AM 24 must be done, but I will say on behalf of plaintiffs, there are
11:42:03AM 25 many areas of achievement as well, Judge, and we would be

11:42:07AM 1 absolutely remiss not to congratulate the State on the work
11:42:12AM 2 done in those areas and to applaud those efforts. That's the
11:42:16AM 3 reason we're here going through this very important process,
11:42:19AM 4 but, unfortunately, the accomplishments are accompanied by
11:42:24AM 5 areas where there continues to be rather substantial deficient
11:42:28AM 6 performance.

11:42:30AM 7 Your Honor, secondly, turning quickly to the area of
11:42:33AM 8 the CAP, plaintiffs are pleased to hear about the efforts being
11:42:41AM 9 made by DHS. We listened very carefully to the presentations
11:42:45AM 10 Your Honor just heard from Ms. Sesti and Mr. Starling, and we
11:42:49AM 11 have no doubt that management is making efforts and focused
11:42:54AM 12 efforts to get after the performance areas that are covered by
11:42:58AM 13 the CAP. We look forward to seeing validated data, Your Honor,
11:43:07AM 14 that would tell us how the CAP efforts translate into actual
11:43:13AM 15 performance on the performance metrics or outcomes defined in
11:43:18AM 16 the settlement agreement.

11:43:20AM 17 So while we're pleased to hear about the outcomes, we
11:43:24AM 18 want to see how that is actually making a difference. We hope
11:43:28AM 19 it's making a significant difference. We just haven't seen
11:43:32AM 20 data on that at this point.

11:43:33AM 21 So, Your Honor, in closing, I think we're at a place
11:43:37AM 22 in this settlement agreement implementation process where we
11:43:44AM 23 can all be pleased with progress that's been made in a variety
11:43:51AM 24 of areas, but I think it's time to still take a deep breath and
11:43:57AM 25 look at what remains to be done and come up with a focused

11:44:03AM 1 energized effort to take the settlement agreement across the
11:44:08AM 2 goal line, and that may still take some time, Your Honor.
11:44:11AM 3 Thank you.

11:44:14AM 4 **THE COURT:** Thank you, Ms. Bartosz.

11:44:16AM 5 I have to say, just as a preliminary matter, that I
11:44:20AM 6 am delighted with the progress that has been made since we
11:44:25AM 7 adopted the CAP last April. I think the State has taken huge
11:44:30AM 8 steps under Director Hertel and congratulations are in order
11:44:38AM 9 for sure.

11:44:40AM 10 But I don't disagree with Ms. Bartosz. There are
11:44:43AM 11 still a few areas that need to have additional work done. The
11:44:50AM 12 maltreatment in care, the contract oversight and the permanency
11:44:57AM 13 issue all need additional care attention, and I think we can
11:45:05AM 14 all see that finish line ahead of us. Whether it's two years
11:45:12AM 15 from now, two and a half years from now, it's hard for me to
11:45:16AM 16 say. I'm not good at predicting the future, but I know that
11:45:23AM 17 the monitors have a suggested plan for moving forward, and I
11:45:29AM 18 would be happy to hear from Mr. Ryan or Ms. Crummy about what
11:45:34AM 19 their suggestion are.

11:45:35AM 20 **MR. RYAN:** Sure, Your Honor. So Eileen and I would
11:45:40AM 21 recommend that after we file with you under seal the findings
11:45:46AM 22 from our more recent maltreatment in care investigation case
11:45:51AM 23 record review, which we're still discussing with the State --
11:45:55AM 24 we expect that will be March -- that we would confer with you,
11:46:00AM 25 Your Honor. And then with your guidance and support, we would

11:46:07AM 1 convene the parties and would mediate a discussion between the
11:46:14AM 2 parties to winnow this agreement so that it focuses squarely on
11:46:19AM 3 the areas that are more than 10 percent off of the performance
11:46:24AM 4 standard and acknowledges the enormous progress that has been
11:46:30AM 5 made in other areas.

11:46:31AM 6 And that progress will be evident to the public in
11:46:35AM 7 our report, and is evident to the parties and to the Court now,
11:46:38AM 8 because at the back of our monitoring report we have color
11:46:43AM 9 coded the State's historic progress since adoption of the MISEP
11:46:48AM 10 indicating areas where the State continues to meet or exceed
11:46:53AM 11 the performance standard, where the State has come close to
11:46:57AM 12 meeting the performance standard, and areas where the State has
11:47:00AM 13 not nearly done so.

11:47:02AM 14 And we hope that that color coding can encourage the
11:47:08AM 15 parties to focus on the red areas and have an agreement that
11:47:13AM 16 really squarely focuses on getting the rest of these areas,
11:47:18AM 17 particularly those that affect children's permanency and
11:47:22AM 18 safety, over the finish line.

11:47:24AM 19 Eileen, do you have anything to add to that?

11:47:29AM 20 **MS. CRUMMY:** No, Kevin. I think that's exactly where
11:47:30AM 21 we're at and would recommend to Judge Edmunds and just to
11:47:38AM 22 underscore that we agree that there has been tremendous
11:47:42AM 23 progress made in this case, and the State, you know, should
11:47:44AM 24 take all due credit for that.

11:47:46AM 25 But, you know, as we reflect in this most recent

11:47:48AM 1 report, there are areas that significantly impact child safety
11:47:53AM 2 and permanency that require focus and clarity and attention,
11:47:57AM 3 and we're happy to, with the Court's direction after we file
11:48:03AM 4 the March report, convene the parties if that's what the judge
11:48:07AM 5 would recommend.

11:48:12AM 6 **THE COURT:** Sounds good to me, and I'm happy to
11:48:14AM 7 participate to any extent that you want me to in a March
11:48:21AM 8 meeting that charts the way forward.

11:48:27AM 9 So anyone else have any thoughts about the
11:48:33AM 10 suggestion?

11:48:36AM 11 **MS. BARTOSZ:** Your Honor, this is Samantha Bartosz.
11:48:38AM 12 On behalf of the plaintiffs, we're, of course, most interested
11:48:42AM 13 in seeing the settlement agreement fully implemented and the
11:48:49AM 14 strategy that the monitors just outlined for the Court. Sounds
11:48:54AM 15 like it could be a meaningful and productive move in that
11:48:58AM 16 direction, so plaintiffs are willing to very much take part in
11:49:04AM 17 those discussions and hopefully to arrive at a way to really
11:49:10AM 18 target our goal toward getting some of these safety and other
11:49:15AM 19 outcomes across the goal line.

11:49:20AM 20 **MS. DRYSDALE-CROWN:** And, Your Honor, this is
11:49:20AM 21 Assistant Attorney General Cassandra Drysdale-Crown. Again I
11:49:26AM 22 want to thank the monitors, Samantha, Your Honor, for
11:49:29AM 23 continuing to work with the Department in its goals. Its
11:49:35AM 24 primary goal is children's safety, and it is committed to
11:49:38AM 25 working and maintaining excellence in providing safety to

11:49:44AM 1 children placed in its care.

11:49:47AM 2 We would be very excited to work with plaintiffs and

11:49:53AM 3 the monitors to narrow down the commitments to focus on

11:50:00AM 4 children's safety in some of the areas where the Department --

11:50:03AM 5 where the MISEP has shown that there's been some deficiency,

11:50:07AM 6 and I just wanted to stress for everyone again that MISEP 21

11:50:14AM 7 data was from 2021 and that the Department believes that Kevin

11:50:22AM 8 and Eileen, with the Court monitoring team, will be able to see

11:50:25AM 9 that tremendous progress has occurred since that time.

11:50:29AM 10 And, Samantha, I can appreciate your -- your

11:50:33AM 11 reluctance to click your heels to this right now, but hopefully

11:50:37AM 12 we'll see some demonstrable evidence and data and some tangible

11:50:43AM 13 anecdotal information that will come forth in that March

11:50:48AM 14 report.

11:50:48AM 15 So thank you very much, Your Honor, for your time and

11:50:51AM 16 we look forward to working with everyone to really narrow down

11:50:54AM 17 the focus and help us achieve the goals that this Court has set

11:51:02AM 18 before us.

11:51:04AM 19 **THE COURT:** Good. Anyone else?

11:51:10AM 20 All right. Thank you all for participating, for the

11:51:14AM 21 PowerPoint, for the report, especially for the monitors and all

11:51:19AM 22 the hard work that the State has done and from the oversight

11:51:24AM 23 that the plaintiffs continue to provide.

11:51:28AM 24 And once we get the March report, we can find a date

11:51:33AM 25 to meet with or without me. Thank you.

11:51:42AM 1 **MS. BARTOSZ:** Thank you, Your Honor.

11:51:43AM 2 **MS. DRYSDALE-CROWN:** Thank you, Your Honor

11:51:44AM 3 **THE CLERK:** We're adjourned.

11:51:45AM 4 (At 11:51 a.m., court recessed.)

11:51:46AM 5

11:51:46AM 6

11:51:46AM 7

11:51:46AM 8

11:51:46AM 9

11:51:46AM 10

11:51:46AM 11 * * * * *

Carol M. Harrison

Date: 3/28/2023

Carol M. Harrison, RMR, FCRR
Official Court Reporter
United States District Court
Eastern District of Michigan
1000 Washington Avenue
Bay City, MI 48708